FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 160

HOWARD UNIVERSITY, A CORPORATION,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

GEORGE E. C. HAYES,
613 F Street, N. W.,
Attorney for Petitioner.

Printed by Law Reporter Printing Co., 518 5th St., Wash. D. C.

SUBJECT INDEX

CASES CITED

STATUTES

REPORT CITED

Joint appendix means Record

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. .....

HOWARD UNIVERSITY, A CORPORATION,
Petitioner,

vs.

DISTRICT OF COLUMBIA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Howard University, a corporation organized by special Act of Congress, approved March 2, 1867 (14 Stat. 438), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia rendered in the above captioned cause on March 18, 1946, rehearing of which was denied April 3, 1946.

I.

OPINIONS OF COURTS BELOW

The decision of the Board of Tax Appeals for the District of Columbia appears in the joint appendix, page 23. Its Findings of Fact and Conclusions of Law appear in the joint appendix, pages 13 through 18.

The opinion of the United States Court of Appeals for the District of Columbia, rendered March 18, 1946, is not yet officially reported but is printed and attached hereto. R-96 to 102

II.

JURISDICTION

A timely petition for rehearing was filed. Rehearing was denied April 3, 1946. - R 103

The jurisdiction to review the cause by writ of certiorari is conferred upon this Court by section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (U.S.C. Title 28, Section 347 (a)).

III.

SUMMARY STATEMENT

The facts are not in dispute. They are for the most part set forth in the joint appendix, pages 2 through 8. They are set forth in the Findings of Fact by the Board of Tax Appeals, joint appendix, pages 13 through 17, which is here quoted for convenience:

> "1. Petitioner is a corporation organized by a special act of Congress approved March 2, 1867 (14 Stat. 438). Section 1 of the statute is as follows:
>
> "Section 1. That there be established, and is hereby established, in the District of Columbia, a university for the education of youth in the liberal arts and

sciences, under the name, style, and title of 'The Howard University.'

"Sec. 2. of the Act authorizes the corporation to take, sell, lease, and place out on interest for the use of the University, real and personal property, and do and transact all and every business touching or concerning the premises, provided that the same not exceed the value of $50,000 net annual income exclusive of receipts for the education and support of the students of the University.

"By act approved May 13, 1938 (52 Stat. 351), section 2 of the incorporating statute was amended by striking therefrom the $50,000 limitation.

"2. Beginning with the Act of March 3, 1879 (20 Stat. 404) Congress has from time to time made appropriations for petitioner. The Act of Congress approved December 13, 1928 (45 Stat. 1021) authorizes annual appropriations to aid in the construction, development, improvement and maintenance of the University, provides that it shall at all times be open to inspection by the Bureau of Education and shall be inspected by the Bureau at least once a year; and that an annual report making a full exhibit of the affairs of the University shall be presented to Congress each year in the report of the Bureau of Education.

"3. The Act of Congress approved June 16, 1882 (22 Stat. 104) recites that whereas the Howard University is an educational institution incorporated by act of Congress, the grounds and buildings of which were obtained under the authority of the United States, with funds appropriated by Congress, and whereas the University, in consideration of the provisions of that Act (of June 16, 1882) proposes to convey to the United States a certain tract of land containing about eleven acres, to be used as a public park under the

superintendence of the United States; enacts that the conveyance is thereby accepted by the United States, and remits all taxes, penalties, interest and costs upon the real and personal property of the University due or to become due, and unpaid at the date of the passage of the act; and further provides, in section 3 thereof as follows:

"Sec. 3. That the property, real and personal, of the said university shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: . . .

"4. In 1929 the trustees of petitioner formulated plans for acquiring certain real property for the physical development of the University, provided funds for the purpose be made available by the General Education Board, and the Julius Rosenwald Fund. The Board and the Fund are philanthropic organizations, one established by John D. Rockefeller and one by Julius Rosenwald, for the furtherance of education.

"In the same year, these organizations agreed to finance such acquisitions and appropriated for that purpose $882,626 of which $661,970 was appropriated by the Board and $220,656 by the Fund. Petitioner thereupon proceeded to purchase a number of parcels of real estate in the vicinity of land and buildings at the time in use by it for educational purposes, and to pay indebtednesses secured by encumbrances on various portions thereof. Certain of the real estate was income-producing and the net income produced therefrom, plus interest earned on unexpended portions of the fund, were used for the acquisition of additional real estate and for the payment of debts secured by encumbrances on the extension property.

"5. On July 1, 1944, this fund, referred to as the 'Plant Extension Fund,' included $1,095,899.83 worth

at cost) of such real estate, subject to encumbrances of $8,990.47. Prior to that date, $305,012 worth thereof had been appropriated to the direct educational purposes of petitioner, and on that date was in use for such purposes, and is not involved in this appeal; $84,157.28 was on that date vacant and not productive of income, and is likewise not here involved. Such of the properties as are enumerated in Finding No. 9 were, on and prior to July 1, 1944, improved by dwellings, apartment houses, and commercial property, and were rented to various tenants for the occupancy of such tenants.

"6. With the exception of $30,000 invested in Government securities, the principal of the Plant Extension Fund and the net income derived from the real estate thereof has been used exclusively for the reduction of indebtednesses secured on the Plant Extension property, or for the acquisition of additions thereto.

"7. The gross rental income of the Extension Fund property for the year ended June 30, 1944, was $50,992.79, and the net income thereof, after deducting expenses, including $17,123.38 for repairs and alterations to buildings, but not including taxes or depreciation, was $23,300.55.

"8. Ever since the acquisition of these properties by petitioner, it has had the intention of ultimately using them for the enlargement of its plant and facilities, and for several years it has had definite plans as to the use to be made of various portions thereof. These plans contemplate total expenditures of about $15,000,000, of which petitioner expects about $11,000,000 to be appropriated by Congress, and to which it expects to contribute the remaining $4,000,000, such remainder to consist of the real property of the Plant Extension Fund and the income, or property to be purchased with the income therefrom, and such addi-

tional funds as it may be able to acquire. The extension program of petitioner has been approved by the Commissioner of Education and the Secretary of the Interior, and by the Committee on Appropriations of the House of Representatives in its report on the Interior Department Appropriation bill for the fiscal year 1932.

"9. In August, 1944, the Assessor made a real-estate tax assessment of $5,662.42 for the fiscal year ended June 30, 1945, against the following-described real estate belonging to petitioner, being that portion of the Extension Fund property which was under rental as stated in Findings 4 and 5:

"Square 3057: Lots 18 to 21 inclusive; Lots 28 to 31 inclusive; Lots 66 to 71, inclusive; Lot 73; Lots 75 to 86, inclusive; Lots 88 to 90, inclusive; Lot 824.

"Square 3058: Lots 31 to 35, inclusive; Lots 37 to 39, inclusive.

"Square 3060: Lots 26 to 28, inclusive; Lot 30; Lots 34 to 39, inclusive; Lots 800 to 802, inclusive; Lots 804 to 815, inclusive; Lots 826 to 828, inclusive; Lot 832.

"Square 3064: Lots 40, 41, 805, 806, 809, 810, 811, 812, 814, 815, 816, 824.

"Square 3068: Lots 27, 28, 802.

"10. On July 1, 1944, petitioner was the owner of also the following-described real estate in the District of Columbia:

"Square 3060: Lot 834.

"Square 3064: Lots C, 817 and 833.

"Square 3068: Lots 7, 8.

"Square 2866: Lot 82.

"With the exception of Lot 82 in Square 2866, all of these properties were in squares in which petitioner owns other property, some of it used for its direct educational purposes and some of it forming a portion of its Extension Fund property but not so used. With respect to some of these properties enumerated in this Finding, definite plans have been made to incorporate them in petitioner's educational plant.

"Lot 82 in Square 2866 is remote from petitioner's educational plant, and it has never been petitioner's intention to use it as part thereof. The properties in Squares 3060, 3084 and 3068 were purchased by petitioner with monies in its endowment funds. Lot 82 in Square 2866 was brought in by petitioner at foreclosure under a mortgage which it held thereon, which mortgage it had acquired with monies in its endowment fund.

"11. All of the properties referred to in Finding No. 10 were, on and prior to July 1, 1945, improved by dwellings, apartments, and commercial properties, which were rented to various tenants for the occupancy of such tenants. The net income from all of these properties was used for the direct educational activities of petitioner, such as payment of professors' salaries, scholarships and costs of administration of its educational affairs.

"The gross rental income therefrom for the fiscal year ended June 30, 1944, was $4,696.48, and the net income thereof, was $1,591.82. These figures include a gross income of $964.23 and a net income of $846.41 from Lot 82 in Square 2866.

"12. In August, 1944, the Assessor made a real-estate tax assessment of $1,152.72 for the fiscal year ended June 30, 1945, against the properties referred to in Finding 10, which included an assessment of $540.18 against Lot 82 in Square 2866.

"13. Petitioner filed this appeal within ninety days after the making of the assessments referred to in Findings 9 and 12, claiming that the properties were exempt from taxation."

Supplementing paragraph 9 of the Findings of Fact by the Board, petitioner sets forth as follows: The Commissioners gave as their reason for making the assessment in their letters of June 1, and 3, 1944 (joint appendix 5, 6, 7), the property was not being used for educational purposes, and not entitled to exemption under the provision of the Act of December 24, 1942.

IV.

SPECIFICATION OF ERRORS

The Court below erred—

1. In affirming the Order of the Board of Tax Appeals—

(a) In holding that the properties here involved were not exempt from taxation under the certain special acts of Congress, dealing with the petitioner.

(b) In not holding that the Commissioners acted without legal authority and contrary to Section 801a, (e) Title 47 of the District of Columbia Code, 1940 Edition.

V.

QUESTIONS PRESENTED

1. Do the special acts of Congress approved March 2, 1867 (14 Stat. 438), (page 14 herein), special Act approved June 16, 1882 (22 Stat. 104) (pages 15-16 herein), special Act approved May 13, 1938 (52 Stat. 351) (page 15 herein), and the Act approved December 24, 1942 (56 Stat. 1089), page 17, exempt the properties of the petitioner involved here from taxation?

(a) Is not *ownership*, so long as used for the purposes set forth in the Charter, rather than bare *use* the true test of the exemption granted?

2. Under the act of Congress approved December 24, 1942, Title 47 of the District of Columbia Code, 1940 Edition, Section 801a (e) (page 17 herein), can the respondent place the petitioner's property upon the tax rolls?

(a) Are not the functions of the Commissioners under this section of the Act purely ministerial which may not be exercised in such a way as to defeat the will of the Congress and defeat the rights of the petitioner?

(b) Does not the legislative history show that it was the intention of the Congress not to change the status of any of the institutions to which the special acts applied?

(c) Can the Commissioners, who recognized the exemption under the acts of 1867, 1882 and 1938, now say that the exemption does not apply by reason of the Act of December 24, 1942?

VI.

DISCUSSION

The basis of this litigation is the action of the Commissioners of the District of Columbia in ordering certain properties of the petitioner placed upon the tax rolls. It is to be noted that the reason for this action is given by the Commissioners in their letters of June 1 and 3, 1944, Joint Appendix 5, 6, and 7, which states as follows: "The property is not used for educational purposes, and is not entitled to exemption under the provisions of the act of December 24, 1942." This admission and the further fact that the Commissioners have taken no action upon this question from the date of the exemption statute until this time, clearly defines the issue and narrows it down to the question whether the power of the Commissioners, under the act of December 24, 1942, Section (e), is purely ministerial, and if they acted without legal authority.

It has been and is now urged that in keeping with the language of the Act (page 17 herein), that the Commissioners acted without legal authority in replacing the previously exempted property of Howard University on the

tax roll and that the Commissioners had no alternative but to make a report to Congress of such use as was being made of the property in question by Howard University, with recommendations; for this property was admittedly "heretofore specifically exempted from taxation by a Special Act of Congress."

Two circumstances, both heretofore urged, first before the Board of Tax Appeals, and next the United States Court of Appeals for District of Columbia, but likewise passed over without comment, impress us with the correctness of our position. First, the intention of Congress in this connection is plainly and convincingly shown in the Report of the Committee on the District of Columbia regarding this tax bill made by Senator McCarran, made as of, to wit, October 7, 1942, as follows:

> "The bill comprises seven sections. Section 1 has 18 subparagraphs listing the real property exempted from taxation under the provisions of the bill.
>
> "Subparagraphs a, b, c, d, and e exempt property belonging to the United States of America, the District of Columbia, foreign governments when such property is used for legation purposes, the Commonwealth of the Philippines when such property is used for government purposes, and property which has heretofore been exempted from taxation by special acts of Congress. Such exemption is continued in force until the Commissioners shall have submitted a recommendation to the Congress as to future possible action. It is intended that nothing in this bill shall be construed to mean that these special acts are repealed or that the status of the institution to which such special Acts apply has changed. The committee has directed that the Commissioners of the District of Columbia shall make a report to the Congress of the use being made of such properties and of any changes in such use during any calendar year, together with recommendations by the Commissioners."

This is all in strict keeping with the rule frequently stated by this Court that taxing acts "are not to be extended by implication beyond the clear import of the language used"; and that doubts are to be resolved against the Government and in favor of the taxpayer.

Secondly, both in the nature of a clarification of the purpose of the proviso and as an intimation of what Congress wanted to have the right to do and would have doubtless done had the proper report with recommendations been made to it by the Commissioners of the District of Columbia, attention is called to the fact that at the time in 1882 when the exemption statute with respect to Howard University was enacted, the University, with full knowledge of Congress, was the owner of extensive property holdings throughout the District of Columbia. The $50,000.00 limitation to tax exemption put upon the University property by Congress simply amounts to a showing of knowledge as to the University's extensive real estate holdings in wide and far flung areas and expressly exempted same up to the amount of said $50,000.00.

Equally significant, and again showing that Congress fully intended that Howard University's property should be tax exempt is the fact that on May 18, 1938 Congress amended the Charter of Howard University by striking therefrom the aforementioned $50,000.00 limitation, and it left no restriction as to the amount of tax exemption to which the University might be entitled (page 15 herein).

This Court judicially knows that Congress annually appropriates more than a million dollars toward Howard University's support and requires of it annually a report as to its stewardship and a detailed report of its holdings of every kind. Is it reasonable to suppose that Congress, in 1888, would first of all have exempted University property scattered throughout the city and not "used" for the purposes of the University, as set forth by the narrow interpretation given by the Board of Tax Appeals and upheld by the United States Court of Appeals for the District

of Columbia if it had not intended that property so "used" should be exempt? Or, can it be supposed that Congress would liberally contribute toward the University's support, as is its wont, and desire or sanction that the effectiveness of its action should be impaired by the imposition of District of Columbia taxes? Doesn't it from this appear that Congress provided for a report and recommendation from the Commissioners of the District of Columbia as to the use being made of property thus exempted by its special acts in order that just such circumstances as we here face might be avoided? What, we ask, if this be not correct, can be the interpretation of the language used? In all events, is not this proposition sufficiently important to merit a decision by this Court?

Because we feel that the exemption granted here is based upon *ownership, so long as used for the purposes set forth in the charter,* rather than just bare *use,* we call the Court's attention to the cases of Washington University v. Rouse, 8 Wall. 439; St. Anna's Asylum v. New Orleans, 105 U. S. 362, decided by this Court; and the cases of Chicago Home v. Carr, 300 Ill. 478, 133 N. E. 344; Washington University v. Baumann, 341 Mo. 708, 108 S. W. (2nd) 403; Vanderbilt University v. Chaney, 116 Tenn. 259, 94 S. W. 90; and Woonsocket Hospital v. Quinn, 54 R. I. 424, 173 Atl. 550.

We cannot but feel that this Court, in the Northwestern University v. People, 99 U. S. 309, and Trinidad, Insular Collector v. Sagrada Orden, 263 U. S. 578, spoke convincingly on the fundamental proposition here involved, and whereas distinctions, such as were made by the Board of Tax Appeals and now by the United States Court of Appeals for the District of Columbia, are admittedly recognizable, we believe that the language used in each of these cases is susceptible of but one interpretation and that in parallel circumstances the property should be exempt from taxation. In this connection we call the attention of the Court to a quotation from the Northwestern University case.

"The purposes of the school, and the school, are not identical. The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes, in the fullest and clearest sense."

With the question here raised as to whether by the renting of property owned by the University that the purpose of the Charter—the education of youth—is violated, it seems to us that this language is controlling. Again with an appreciation of the distinction drawn by this Court in the Trinidad, Insular Collector case, the language seems to us so applicable that we again partially quote a citation from that case:

"Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted. This is recognized in Northwestern University v. Illinois, 99 U. S. 309, 324, 25 L. ed. 387, 390, where this court said: 'The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes, in the fullest and clearest sense.'"

Prior to the decision of the United States Court of Appeals for the District of Columbia, March 18, 1946, this matter had not been passed upon in this jurisdiction, and it is respectfully submitted that writ of certiorari should issue from this Court to the United States Court of Appeals for the District of Columbia.

Respectfully submitted,

George E. C. Hayes,
613 F Street, N. W.,
Attorney for Petitioner.

ACT OF INCORPORATION OF HOWARD UNIVERSITY

Special Act of Congress, approved March 2, 1867 (14 Stat. 438).

"Section 1. That there be established, and is hereby established, in the District of Columbia, a University for the education of youth in the liberal arts and sciences, under the name, style, and title of—The Howard University.

"Section 2. And be it further enacted, that Samuel C. Pomeroy, Charles B. Boynton, Oliver O. Howard, Burton C. Cook, Charles H. Howard, James B. Hutchinson, Henry A. Brewster, Benjamin F. Morris, Danforth B. Nichols, William G. Finney, Roswell H. Stephens, E. M. Cushman, Hiram Barber, E. W. Robinson, W. F. Bascom, J. B. Johnson, and Silas L. Loomis be, and they are hereby declared to be a body politic and corporate, with perpetual succession in deed or in in law to all intents and purposes whatsoever, by the name, style, and title of 'The Howard University,' by which name and title they and their successors shall be competent, at law and in equity, to take to themselves and their successors, for the use of said University, any estate whatsoever in any messuage, lands, tenements, hereditaments, goods, chattels, moneys, and other effects, by gift, devise, grant, donation, bargain, sale, conveyance, assurance or will; and the same to grant, bargain, sell, transfer, assign, convey, assure, demise, declare to use and farm let, and to place out on interest, for the use of said University, in such manner as to them, or a majority of them, shall be deemed most beneficial to said institution; and to receive the same, their rents, issues and profits, income and interest, and to apply the same for the proper use and benefit of said University; and by the same name to sue and be sued, to implead and be impleaded, in any courts of law and equity, in all manner of suits, actions, and proceedings whatsoever, and generally by and in the same name to do and transact all and every the business touching or concerning the premises: Provided, That the same do not exceed the value of fifty thousand dollars net annual income, over and above and exclusive of the re-

ceipts for the education and support of the students of said University."

Amended and approved, May 13, 1938 (52 Stat. 351).

"Section 2. And be it further enacted, That Samuel C. Pomeroy, Charles B. Boynton, Oliver O. Howard, Burton C. Cook, Charles H. Howard, James B. Hutchinson, Henry A. Brewster, Benjamin F. Morris, Danforth B. Nichols, William G. Finney, Roswell H. Stephens, E. M. Cushman, Hiram Barber, E. W. Robinson, W. F. Bascom, J. B. Johnson and Silas L. Loomis be, and they are hereby declared to be a body politic and corporate with perpetual succession in deed or in law to all intents and purposes whatsoever, by the name, style and title of 'The Howard University,' by which name and title they and their successors shall be competent, at law and in equity, to take to themselves and their successors, for the use of said University, any estate whatsoever in any messuage, land, tenements, hereditaments, goods, chattels, notes, bonds, stocks, moneys, and other effects, by gift, devise, grant, donation, bargain, sale, conveyance, assurance or will; and the same to grant, bargain, sell, transfer, assign, convey, assure, demise, declare to use and farm let, and to place out on interest, for the use of said University, in such manner as to them, or a majority of them, shall be deemed most beneficial to said institution; and to receive the same, their rents, issues and profits, income, dividends and interests, and to apply the same for the proper use and benefit of said University; and by the same name to sue and be sued, to implead and be impleaded, in any courts of law and equity, in all manner of suits, actions, and proceedings whatsoever, and generally by and in the same name to do and transact all and every the business touching or concerning the premises."

"Amended and approved, May 13, 1938."

EXEMPTION ACT

Special Act of Congress, approved June 16, 1882 (22 Stat. 104).

"Chapter 222.—An Act for the Relief of Howard University. Whereas the Howard University is an

educational institution incorporated by Act of Congress, the grounds and buildings of which were obtained, under the authority of the United States, with funds appropriated by Congress; and

Whereas the said University, in consideration of the provisions of this Act, proposes to convey by a sufficient deed to the United States the parcel or square of ground bounded by Pomeroy Street, Fourth-and-a-half Street, College Street, and Sixth Street, known as University Park, containing about eleven acres, to be used as a public park under the superintendence of the United States, provided that whenever the same shall cease to be used as a public park the title thereto shall revert to the Howard University: Therefore, *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the conveyance of the premises described in the preamble to this act, in the manner and upon the terms and consideration therein mentioned, be, and is hereby, accepted by the United States.

"Sec. 2. That all taxes, penalties, interest, and costs upon the real and personal property of the Howard University due, or to become due, and unpaid at the date of the passage of this act, be, and the same are hereby, remitted.

"Sec. 3. *That the property, real and personal, of the said University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution*:

Provided, That nothing in this act shall exempt any real estate of said university from assessment and liability for special improvements authorized by law:

Provided also, That this act shall not include any real estate sold or contracted to be sold by said University to any other person than the United States, the title to which may be still in the said University.

Approved June 16, 1882, (22 Stat. L. 104)."

(Italics ours.)

Act approved December 24, 1942 (56 Stat. 1089).

"Title 47-801a. Government property; property of educational, charitable, religious or scientific institutions; additional grounds of; profits arising from sale of.

"The real property exempt from taxation in the District of Columbia shall be the following and none other:

(a) Property belonging to the United States of America.

(b) Property belonging to the District of Columbia.

(c) Property belonging to foreign governments and used for legation purposes.

(d) Property belonging to the Commonwealth of the Philippines and used for Government purposes.

(e) Property heretofore specifically exempted from taxation by any special Act of Congress, in force December 24, 1942, so long as such property is used for which such exemption is granted. The Commissioners of the District of Columbia shall report annually to the Congress the use being made of such specifically exempted property, and of any changes in such use, with recommendations."